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sentencing opinion, that have seemed to repudiate the rule, at least as applied to devises; in *Wescott v. Binford*, 104 Ia. 645, for example, the court says: "If it be in force, it cannot defeat the intent of a testator, as expressed by the language of his will." When applied in its integrity it certainly can defeat the testator's intention as most clearly expressed by the language of his will—see, for recent instances, *Deemer v. Kessinger*, 206 Ill. 57, and *McCann v. Barclay*, 204 Pa. St. 214, which simply follow hundreds of cases of the same sort. LORD MACNAGHTEN says in one of the latest English decisions on the subject—*Van Grutten v. Foxwell* [1897], A. C. 658, 66 L. J. Q. B. 745—"it was constantly made a matter of complaint that the rule disappointed the intention, as if that were not its very end and purpose; as if it had not been at the outset 'levelled against the views of the parties.'"

Nevertheless, this ancient rule of uncertain origin and curious history has survived discussion, criticism and explanation, and is law. The majority of the Iowa court say it is "the duty of this court to administer the law as found, and, even though it be confident of possessing the wisdom essential to successfully reform and improve many of its rules, the Constitution has conferred the authority so to do upon another branch of government."

Perhaps the legislature will abrogate the rule, but even so lawyers of Iowa must for a long time keep it in mind, as it will apply to grants and devises taking effect before its abolishment—*Wilson v. Alston*, 122 Ala. 630; *Spader v. Powers*, 56 Hun. 153; *Hurst v. Wilson*, 89 Tenn. 270—and during all these past years Iowa testators and grantors must have known the law, though their Supreme Court has never been sure of it till now.

ARE CONDITIONS IMPOSED BY THE VENDOR OF CHATTELS BINDING ON SUBSEQUENT PURCHASERS?—The owners of "proprietary medicines" and other patented articles, in their effort to maintain a high level of prices, have been making strenuous efforts to inject into the law of sales doctrines which would seem to be somewhat foreign to common law principles. Recent court decisions resulting from such efforts are not wholly harmonious.

Garst v. Harris, 177 Mass. 72, 58 N. E. Rep. 174, was an action of contract to recover stipulated damages for breach of an agreement not to resell a proprietary medicine, purchased by defendant of plaintiff, below a stipulated price. At the time of the sale and as a part of it a written statement of terms containing this agreement was read and delivered to the defendant. Defense to the action was made on the ground that the contract was in restraint of trade; but the court, speaking through HOLMES, C. J., held that the contract was valid, and that, in selling below the specified price, defendant was guilty of breach, for which stipulated damages should be awarded. In *Garst v. Hall*, 179 Mass. 588, 61 N. E. 219 (See 1 MICH. LAW REVIEW, 336), an effort was made to extend the restriction as to the minimum price of resale to third persons who had purchased from the original vendee. The contract relied upon was in the same form as in the prior case, and an injunction was prayed for restraining the defendant from selling below the stipulated price. The court held that as the defendant had not purchased from or contracted with

the plaintiff, but had bought of a purchaser of plaintiff's vendee, he had absolute title and could sell as he pleased. In other words, the court held that such restrictions could not be made to follow the goods into the hands of third persons, even where notice of the restriction, coupled with a statement that subsequent purchasers "will be deemed to have accepted such conditions and to be bound thereby," is given by means of a label or other device attached to the goods. But in *Garst v. Charles*, 72 N. E. Rep. 839 (Mass.), decided Jan. 5, 1905, the same type of contract was in controversy. The defendant had formerly purchased a quantity of the medicine from plaintiff, but had returned it in accordance with a term of said contract, which provided that he might so return it in case he wished to discontinue selling. He then procured one Bickford, a retail druggist, to purchase a supply of plaintiff. This was done, Bickford entering into the same form of contract, and agreeing not to sell at less than the specified price. Bickford turned the medicine over to defendant at the purchase price, who proceeded to advertise and sell it at less than the agreed price. The Supreme Court held this to be a conspiracy to deprive plaintiff of the benefit of his contract, and affirmed the decree of the trial court allowing an injunction with damages. It will be noted that in *Garst v. Hall*, supra, the bill averred notice to defendant of the contract price restrictions, but as the case went up on demurrer to said bill, notice was not proved. In *Garst v. Charles*, though the defendant did in fact have notice, the decision was based on conspiracy and not on notice to defendant. But the question of the effect of notice to succeeding purchasers has been squarely met and decided in two recent English cases. *Taddy & Co. v. Sterious* [1904], 1 Ch. 354, 73 Law Journal Reports, 191, which was discussed in 2 MICH. LAW REVIEW, 726, and *McGruther v. Pitcher* [1904], 2 Ch. 306, 73 Law Journal Reports, 653. In the latter case plaintiffs, who were manufacturers of rubber heel pads, sold them in boxes to which were affixed printed conditions relating to the minimum prices on resale, and stating that acceptance of the goods by any purchaser would be deemed an acknowledgment that they were sold to him on those conditions, and that he agreed with the vendors, as agents of the plaintiffs, to be bound by said conditions. Defendant, a retail dealer, had purchased from a factor of plaintiffs; and it was shown that he had knowledge of the conditions, having been orally informed of them. He then proceeded to sell said pads at retail at less than the stipulated prices. The principal opinion was stated by VAUGHAN WILLIAMS, L. J., and is based largely upon the holding in *Taddy & Co. v. Sterious & Co.*, the gist of which is that "conditions of this kind do not run with the goods, and cannot be imposed upon them. Subsequent purchasers, therefore, do not take subject to any conditions which the court can enforce." ROMER, L. J., in a concurring opinion added that even if it were shown that defendant had agreed with plaintiff's factor regarding these conditions, he "would have difficulty in holding that that fact * * * made a contract between defendant and plaintiffs." There can be no doubt that these English holdings are in accordance with reason and fundamental principles.

Numerous decisions in our Federal courts, which seem at first glance somewhat at variance with the English rule, are based upon peculiar features of

patent law. Thus where the owner of patents granted licenses to use and vend the patented articles, the licensee agreeing not to resell such articles for less than a stipulated price, nor to anyone who did not sign a like agreement, and that should such articles be sold in violation of such agreement, the license should be void, it was held that such conditions were valid, and that a sale in violation of them constituted an infringement. *Edison Phonograph Co. v. Pike*, 116 Fed. Rep. 863. See also the much cited case *Heaton-Peninsular, etc., Co. v. Eureka Specialty Co.*, 25 C. C. A. 267, 77 Fed. Rep. 288. But in *Victor Talking Machine Co. v. The Fair*, 118 Fed. Rep. 609 (1902), it was held that an absolute sale of a completed patented article, even though restrictions as to its resale are sought to be imposed by notices placed thereon, falls under the general rule, and that such restrictions are of no effect so far as subsequent purchasers are concerned. The court said in that case, "the patented article has passed, by the sale to the jobber, entirely out of the domain of patent, and cannot again be brought within that domain." Similar restrictions regarding copyrighted articles have been put upon much the same legal basis. Thus, in *Henry Bill Publishing Co. v. Smythe*, 27 Fed. Rep. 914, it was held that so long as the owner of a copyright retains the title to books covered thereby he can impose restrictions as to the manner (as by subscription) and to whom the copies can be sold, and that violation of his instructions to his agents, who fraudulently sell to a person with notice or knowledge of the restrictions, or who under all the circumstances should be held to have notice thereof, will be an infringement of the copyright. But it is held, and certainly with sound reason, that where the owner of a copyright has made an absolute sale of copies of the book covered thereby, he cannot by notices printed in or attached to such books control the price at which such copies may be resold. *Bobbs-Merrill Co. v. Snellenburg*, 131 Fed. Rep. 530; *Harrison v. Maynard*, 61 Fed. Rep. 689, 10 C. C. A. 17.

NECESSITY FOR THE PERSONAL PRESENCE OF THE ACCUSED UPON ARRAIGNMENT.—The defendant was charged with larceny from the person, a misdemeanor punishable by fine or imprisonment, and executed a bail bond with sufficient sureties, conditioned that he should make his appearance before the proper court on a certain day and from day to day thereafter, to answer to the said offense. When the case was called the defendant was not present, but his authorized counsel offered to enter a plea of guilty for him. On this state of facts the Supreme Court of Georgia held, in *Wells v. Terrell* (1904), 49 S. E. Rep. 319, that the trial court properly refused to allow the plea to be made by counsel, and that only the actual, personal presence of the defendant would satisfy the condition of the bond.

In discussing the function and the essentials of an arraignment, the court said: "Regularly, this procedure requires the defendant to stand up, face the court and jury, and listen to the reading of the indictment. In answer to the clerk's inquiry whether he is guilty or not guilty of the offense charged, he orally makes his plea. This is not a mere idle ceremony, but furnishes a safe and conclusive means of identification. It permits the court, on the rendition of a verdict of guilty, to impose sentence and put the identified